STATE OF NEW YORK

313

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. ROZIC, BARRETT, BLAKE, DAVILA, DE LA ROSA, D'URSO, ENGLEBRIGHT, GALEF, GOTTFRIED, JAFFEE, MOSLEY, NIOU, OTIS, QUART, RIVERA, L. ROSENTHAL, SEAWRIGHT, SIMON, WEPRIN, ABINANTI -- Multi-Sponsored by -- M. of A. DICKENS, LUPARDO -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law and the labor law, in relation to establishing certain practices relating to models

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The executive law is amended by adding a new section 296-e to read as follows:

§ 296-e. Unlawful discriminatory practices relating to models. 1. As used in this section, the following terms shall have the following meanings:

a. "client" means a retail store, a manufacturer, a clothing designer, an advertising agency, a photographer, a publishing company or any other such person or entity that receives modeling services from a model;

b. "hiring party" means any person or entity who exercises any form of control over a model's services, including modeling entities, brands, and other clients, other than (1) the United States government, (2) the state of New York, including any office, department, agency, authority or other body of the state including the legislature and the judiciary, (3) a city government, including any office, department, agency or other body of that city, (4) any other local government, municipality or county or (5) any foreign government.

c. "model" means an individual, regardless of his or her status as an independent contractor or employee, who performs modeling services for a client or consents in writing to the transfer of his or her legal right to the use of his or her name, portrait, picture or image, for advertis-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD01564-01-9

ing purposes or for the purposes of trade, directly to a client or who provides showroom or fit modeling services;

d. "modeling entity" means a modeling agency, model management company, employment agency, and/or any person or entity that: (1) is in the business of managing entertainments, exhibitions or performances, or the models, artists or attractions constituting the same; (2) who, for a fee, procures or attempts to procure: (i) employment or engagements for persons seeking employment or engagements, or (ii) employees or independent contractors for employers or entities seeking the services of employees or independent contractors; and/or (3) renders vocational guidance or counselling services to models; and

e. "modeling services" means the appearance by a model in photographic sessions or the engagement of a model in runway, live, filmed, or taped performances requiring him or her to pose, provide an example or standard of artistic expression or to be a representation to show the construction or appearance of some thing or place for purposes of display or advertising. Modeling services shall also include the provisions of showroom or fit modeling services.

2. It shall be an unlawful discriminatory practice for a hiring party to:

a. engage in unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature to a model when:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of a model's provision of modeling services;

(2) submission to or rejection of such conduct by a model is used either explicitly or implicitly as the basis for decisions concerning the individual's provision of modeling services; or

(3) such conduct has the purpose or effect of unreasonably interfering with a model's provision of modeling services by creating an intimidating, hostile, or offensive environment; or

b. subject a model to harassment based on age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status, where such harassment has the purpose or effect of unreasonably interfering with an individual's provision of modeling services by creating an intimidating, hostile, or offensive environment; or

c. threaten, intimidate, discipline, harass, deny a work opportunity to or discriminate against a model, or take any other action that penalizes a model for, or is reasonably likely to deter a model from, exercising or attempting to exercise any right guaranteed under this article, or from obtaining future work opportunity because the model has done so.

3. a. Each client and modeling entity shall post, in a conspicuous place at their place of business and/or at the site of each job assignment, notices to the models hired, to be prepared or approved by the division, setting forth excerpts from, or summaries of, the pertinent provisions of this section and information related to filing a complaint under this article including pro bono and/or legal services contact information.

b. Each client shall provide to each model providing modeling services, in writing or electronically, the names and/or offices, and a reliable means of contacting such individuals or offices, to whom a complaint under this article may be made.

c. At the initial execution of the contract between the modeling entity and the model, the model shall be informed in writing of the

provisions of this article including the procedure for filing a complaint. The model shall demonstrate his or her understanding of the provisions of this article and that such information has been provided to him or her by signing a form, to be prepared or approved by the division, to that effect.

4. a. Each modeling entity or client shall implement a system or procedure for receiving complaints under this section and section two hundred ninety-six-d of this article. Such procedures shall provide a written or electronic receipt to the complainant acknowledging that the complaint has been received and catalogued. Registration of complaints via these systems or procedures, or failure on the part of the modeling entity or client to implement such system or procedure, shall be considered as evidence of knowledge or notice of the alleged sexual harassment.

b. Modeling entities shall be considered employers and models shall be considered employees for purposes of section two hundred one-g of the labor law. Clients shall be considered employers for purposes of subdivision one of section two hundred one-g of the labor law.

5. Modeling entities and clients may be held jointly and severally liable for claims of sexual harassment brought under this section and section two hundred ninety-six-d of this article.

6. Nothing in this section shall be construed or interpreted to limit the rights of models provided under this chapter or any other provisions of law.

§ 2. Subdivision 4 of section 292 of the executive law, as amended by section 2 of subpart F of part KK of chapter 57 of the laws of 2018, is amended to read as follows:

4. The term "unlawful discriminatory practice" includes only those practices specified in sections two hundred ninety-six, two hundred ninety-six-a [~~and~~], two hundred ninety-six-c, and two hundred ninety-six-e of this article.

§ 3. The labor law is amended by adding a new section 202-n to read as follows:

§ 202-n. Provision of educational materials regarding nutrition and eating disorders to adult models. 1. For the purposes of this section, the following terms shall have the following meanings:

a. "adult model" means an individual over the age of eighteen, regardless of his or her status as an independent contractor or employee, who performs modeling services for a client or consents in writing to the transfer of his or her legal right to the use of his or her name, portrait, picture or image, for advertising purposes or for the purposes of trade, directly to a client or who provides showroom or fit modeling services;

b. "client" means a retail store, a manufacturer, a clothing designer, an advertising agency, a photographer, a publishing company or any other such person or entity that receives modeling services from a model;

c. "modeling entity" means a modeling agency, model management company, employment agency, and/or any person or entity that: (1) is in the business of managing entertainments, exhibitions or performances, or the models, artists or attractions constituting the same; (2) who, for a fee, procures or attempts to procure: (i) employment or engagements for persons seeking employment or engagements, or (ii) employees or independent contractors for employers or entities seeking the services of employees or independent contractors; and/or

(3) renders vocational guidance or counselling services to models; and

d. "modeling services" means the appearance by a model in photographic sessions or the engagement of a model in runway, live, filmed, or taped performances requiring him or her to pose, provide an example or standard of artistic expression or to be a representation to show the construction or appearance of some thing or place for purposes of display or advertising. Modeling services shall also include the provisions of showroom or fit modeling services.

2. a. A modeling entity shall make available educational materials regarding nutrition and eating disorders to an adult model within ninety days of the date of agreeing to representation by the modeling entity or procurement by a modeling entity of an engagement, meeting, or interview, whichever comes first.

b. Educational materials regarding nutrition and eating disorders shall include, at a minimum, the components specified in the National Institute of Health's Eating Disorders internet website or a successor internet website.

c. Educational materials regarding nutrition and eating disorders for each adult model shall be in the language understood by such adult model. The modeling entity may comply with this language requirement either by making the educational materials available in the adult model's native language or by having the educational materials presented for such adult model in the language that he or she understands.

d. The modeling entity shall keep a record for three years confirming that it has made available educational materials regarding nutrition and eating disorders to all adult models who have been signed for representation after the effective date of this section.

§ 4. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.